the nation was being threatened. Therefore, the preliminary objection to the jurisdiction of this court is overruled and I hold that the Emergency (Essential Powers) Ordinance No. 1 of 1969 has been promulgated under the provisions of Article 150(2) of the Federal Constitution and by reason of that the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 are not unconstitutional and not invalid.

The applicant's trial under the said regulations is constitutional and lawful.

The preliminary objection is therefore dismissed.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

LEMBAGA AMANAH SEKOLAH SEMANGAT MALAYSIA v. COLLECTOR OF LAND REVENUE, DINDINGS

[O.C.J. (Hashim Yeop A. Sani J.) June 22, 1976]
[Ipoh — Land Reference No. 1 of 1975]

Land Acquisition — Objection to award — Hearing and procedure — Burden of proof — Principle of reinstatement — Market value — Principles of valuation — Land Acquisition Act 1960, s. 37(1)(b).

This was an objection under section 37(1)(b) of the Land Acquisition Act, 1960 against the award of the Collector in respect of land covering an area of 6 acres 3 roods 32 poles, belonging to the applicant, on which were also found the main building of the Outward Bound School, Wardens Bungalow, Instructors Quarters, Store and Workshop, and Storage and Supply Installations belonging to the Outward Bound Trust of Malaysia, the applicant. The land was compulsorily acquired for the proposed site of the Royal Malaysian Navy Military Base. It was not disputed that the provisions of section 4 and section 8 of the Act have been complied with and that an inquiry was held by the Collector under section 12 of the Act following the service of the notices required under sections 10 and 11 of the Act. It was argued for the applicant that the principle of reinstatement should be applied.

Held: (1) the Land Acquisition Act makes clear that the basis for determining adequacy of compensation is the market value and other factors set out in paragraph 2 of the First Schedule;

(2) the Land Acquisition Act has adopted the valuation method prescribed in paragraph 2 of the Schedule with the express direction that *no other consideration* should be taken into account in arriving at an award;

(3) the legislative scheme of the Land Acquisition Act did not admit of the consideration of the reinstatement principle in the assessment of compensation.

Cases referred to:-

(1) *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori* A.I.R. 1933 Bomb. 361, 364.

(2) *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99.

(3) *Wan Mohamed* v. *Collector of Land Revenue, Kota Bharu* [1968] 2 M.L.J. 64.

(4) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43.

(5) *Vyricheria Narayana Gajapatiraju Bahadur Garu* v. *Revenue Divisional Officer, Vizagapatam* 181 Ind. Cas. 230 P.C.

(6) *A and B Taxis, Ltd.* v. *The Secretary of State for Air* [1922] 2 K.B. 328 at p. 336.

(7) *Baroda Prasad Dey, Chairman, Serampur Municipality* v. *Secretary of State* (1921) I.L.R. 40 Cal. 83; 25 C.W.N. 677.

(8) *State of Gujarat* v. *Vakhatsinghi* A.I.R. 1968 S.C. 1481.

(9) *Province of West Bengal* v. *Raja of Jhargram* A.I.R. 1955 C. 392.

(10) *West Bengal* v. *Subodh Gopal* [1954] S.C.R. 587; A.I.R. 1954 S.C. 92.

(11) *Dwarkadas Srinivas* v. *Sholapur Spinning Co.* [1954] S.C.R. 674; A.I.R. [1954] S.C.

(12) *State of West Bengal* v. *Mrs. Bela Banerji* [1954] S.C.R. 558; A.I.R. 1954 S.C. 170.

(13) *Vacher & Sons, Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 113.

(14) *Grey* v. *Pearson* (1857) 6 H.L.C. 61, at p. 106.

(15) *Sussex Peerage Case* (1844) 11 Cl. & F. 85, at p. 143.

(16) *Magor and St. Mellons Rural District Council* v. *Newport Corporation* [1952] A.C. 189 at p. 191.

(17) *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 K.B. 481.

(18) *Island Peninsular Development Bhd.* v. *Collector of Land Revenue, Penang* Penang — Land Reference No. 15 of 1973 (unreported).

LAND REFERENCE.

S.D.K. Peddie for the applicant.

Mohamed Eusoff bin Chin (Legal Adviser, Perak) for the respondent.

Hashim Yeop A. Sani J.: This is an objection under section 37(1)(b) of the Land Acquisition Act, 1960 against the award of the Collector of Land Revenue, Dindings, in respect of land in EMR 779, Lot No. 1657, in the Mukim of Lumut, in the District of Dindings, covering an area of 6 acres 3 roods 32 poles, belonging to the applicant, on which are also found the main building of the Outward Bound School, Wardens Bungalow, Instructors Quarters, Store and Workshop, and Storage and Supply Installations belonging to the Outward Bound Trust of Malaysia, the applicant. The land was compulsorily acquired for the proposed site of the Royal Malaysian Navy Military Base. It is not disputed that the provisions of section 4 and section 8 of the Act have been complied with and that an inquiry was held by the Collector under section 12 of the Act following the service of the notices required under sections 10 and 11 of the Act.

In Form O which was referred to the court by the Collector under section 38(5) of the Act, it is stated that the amount of compensation awarded under section 14 is $211,257 and the grounds on which the amount of compensation was determined are set out in the said form after considering the advice of the Director of Valuation, Perak.

In a proceeding of this nature the position of the parties has been well-settled. Since the applicant is dissatisfied with the amount of compensation awarded the onus is on the applicant to show that the award of the Collector was inadequate as stated by Broomfield J. in *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori*[1]: —

"The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence."

This authority was cited in *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur*[2] and *Wan Mohamed* v. *Collector of Land Revenue, Kota Bharu.*[3] In *Collector of Land Revenue* v. *Alagappa Chettiar*[4] the position was re-stated by Lord Diplock in the judgment of the Privy Council as follows: —

"It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant. The onus lies upon the applicant to satisfy the court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded."

From what I can gather the applicant's contention was that this was a unique case in that the Outward Bound School itself should be regarded as a public purpose and therefore the acquisition called for an "unusual principle" of compensation. It was therefore submitted by counsel that the principle of reinstatement should be applied. Counsel further submitted that judging from the records those concerned with the inquiry before the Collector were already thinking in terms of the reinstatement principle although the award finally made did not reflect this consideration. Coming to the basic question first, the reinstatement principle has as far as I know never been applied before in land acquisition cases in this country and therefore I informed both parties that I should make a ruling on this issue first before hearing any evidence. Consequently the preliminary submissions were confined only to the question whether the reinstatement principle is recognised in our Land Acquisition Act, 1960 and if so whether it applies to this case.

It is not disputed that the government has acquired another piece of land not far from the land the subject of this reference for the purpose of the Outward Bound School. It appears the learned Legal Adviser had doubts whether the acquisition was for a public purpose. But I do not think this narrow issue is material for the purpose of this decision. Another undisputed fact is that there is a genuine intention of the Trust to remove their present installations to the new area.

Basic in the argument submitted on behalf of the applicant is what counsel referred to as the "similarity" between the wording of paragraph 2 of the First Schedule to our Land Acquisition Act, 1960 and section 23 of the Indian Land Acquisition Act, 1894. The principle of reinstatement has been recognised by the Courts of India. In *Vyricherla Narayana Gajapatiraju Bahadur Garu* v. *Revenue Divisional Officer, Vizagapatam*[5] the Privy Council considered section 23 of the Indian Act and Lord Romer in his judgment said:

"The general principles for determining compensation that are specified in these sections differ in no material respect from those upon which compensation was awarded in this country under the Land Clauses Act of 1845 before the coming into operation of the Acquisition of Land (Assessment of Compensation) Act of 1919. As was said by Wadsworth J., when giving judgment in the High Court in the present case. It is well settled that English decisions under the Land Clauses Act of 1845 lay down principles which are equally applicable to proceedings under the Indian Act."

The principle of reinstatement was however not incorporated in any provision either in the Land Clauses Act, 1845 or in any Indian Act. But it is recognised by the courts in cases under the Land Clauses Act, 1845. The courts would seem to have decided on whether the principle apply to a particular case depending on the facts of the case. Thus in *A and B Taxis, Ltd.* v. *The Secretary of State for Air,*[6] Bankes L.J. said:

"It must depend upon the facts whether in a particular case the principles of reinstatement as stated apply; and the material considerations would seem to be first, the nature of the business which is to be displaced; it would be unreasonable to incur great expense in reinstating a business which could only be carried on at a loss; secondly, the time during which the business is to be displaced. If the time was very short it might be unreasonable to incur any expense in reinstating it."

Sanjiva Row's Law of Land Acquisition and Compensation, 4th Edition, 1958, stated at page 305 that —

"In England there is also statutory provision recognising the principle of reinstatement. Section 2(5) of the English Acquisition of Land (Assessment of Compensation) Act, 1919, embodies this principle. It says 'where land is, and but for compulsory acquisition would continue to be devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.' There is no such provision in the Indian Land Acquisition Act. But the principle has received judicial recognition based as it is on equity."

There is no particular provision in the Indian Act corresponding to section 2(5) of the English Acquisition of Land (Assessment of Compensation) Act, 1919. But the principle of reinstatement, based as it is on equity, has received recognition in India. In *Baroda Prasad Dey, Chairman, Serampur Municipality* v. *Secretary of State*[7] where a certain land used for a municipal drain was acquired by the Government for building quarters for a Police Officer, the principle of reinstatement was held to be applicable and compensation was assessed at the cost of having other suitable land for the purpose plus the cost for adapting it to such use. Mookerji J. explained that by taking section 23 "as a whole" including clauses thirdly and fourthly, this basis of compensation was justifiable.

The application of the principle of reinstatement by those courts have depended however on the facts of each particular case. There have been cases where the High Courts in India had rejected the reinstatement method. Among other things it has been held it would be sufficient reason to reject reinstatement principle when the market value deduced from the income derived from the land would fairly compensate the owner and also in no case could reinstatement value be given unless reinstatement in some other place is *bona fide* intended. Thus in *State of Gujarat* v. *Vakhatsinghi*[8] the High Court rejected the reinstatement method.

Varghese on Real Estate Valuation in Malaysia would seem to suggest that although there have been no cases involving the application of this principle in this country the provision of subsection (e) of paragraph 2 of the First Schedule to our Land Acquisition Act, 1960, seems by implication to recognise the principle of reinstatement. However he did not give his reason for saying so.

Before we go any further let us see what the principle of reinstatement means. *Aggarawala,* 4th Edition, page 313 says of reinstatement as follows: —

"There are some cases in which the income derived, or probably to be derived, from land would not constitute a fair basis in assessing the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. An instance of such cases are churches, schools, hospitals, houses of exceptional character, and business premises in which the business can only be carried on under special conditions or by means of special licence."

By reinstatement is therefore meant the cost of placing the claimant, in this case the applicant, in the same position or in an equally advantageous position to that he occupied when he was dispossessed by the acquiring authority. If there is no basis to assess the compensation and the market value cannot be ascertained the authority conducting the inquiry would have no basis but to assess the compensation on the basis of equivalent reinstatement provided that he is satisfied that the applicant *bona fide* intends to reinstate himself elsewhere. In the judgment of the Supreme Court in *State of Gujarat* v. *Vakhatsinghi, supra,* an extract reproduced from *Cripps* on Compulsory Acquisition of Land, 11th edition, Articles 4-203, page 907 explains this method thus: —

"Before the Acquisition of Land Act, 1919, reinstatement value, instead of market value, was sometimes given so as to give proper effect to the principle of compensation on the basis of value to the owner. Generally it was only given in respect of property which was of such a nature (for example, a school, church hospital, house of exceptional character, business premises in which the business could be carried on under special conditions or by means of a special licence) that there was no market or general demand for such property; and a market value deducted from the income derived would not constitute a fair basis in assessing the value to the owner."

In respect of our own Land Acquisition Act, 1960, *Verghese* says of what he thinks of the principle of reinstatement in relation to the Act as follows: —

"Although sub-paragraph (1) of paragraph 1 and sub-paragraph (a) of paragraph 2 of the First Schedule to the Land Acquisition Act, 1960 state that compensation for any scheduled land acquired shall take into consideration the market value as at the date of the notification under section 4 or that of the declaration under section 8 as the case may be, there would be instances where the properties acquired may not have a market value, for instance, religious establishments, schools or like properties which do not normally have a market because of the special purposes for which these are constructed. In such cases the cost of replacement is the only basis on which compensation can be assessed provided of course the affected owner actually intends to replace on a different site buildings and other structures affected by the acquisition."

The admission of the principle of reinstatement into the Indian Land Acquisition Law was made possible by reference to section 23 of the Land Acquisition Act, 1894 as per Buckland J. in *Baroda Prasad Dey's* case, *supra,* that the intention of section 23 of the Land Acquisition Act taken as a whole is to provide complete indemnity to a person whose land is compulsorily acquired. It has also been urged by counsel for the applicant in this case that section 15 of our own Land Acquisition Act, 1960, admits of such construction with the presence of the word "equitable" in subsection (1) thereof since principles of equity are invoked. Counsel also referred to paragraph 2(e) of the First Schedule of our Act in reference to consequences of the position where the owner will be compelled to change residence or place of business.

Paragraph 2(e) of the Schedule to our Act in my view only means what it says, i.e. the reimbursement and payable separately of all reasonable expenses incurred incidental to the change if the change is consequent upon the acquisition. The words "if any" in paragraph 2(e) which also appear in the fifth clause of section 23 of the Indian Act clearly indicate in my opinion that the scope is intended only to cover incidental expenses reasonably incurred. According to Aggarawala, Volume 2, page 496, it embodies another well-known principle of compensation which although not specifically mentioned in the English Land Clauses Act, 1845, is nevertheless recognised by the courts. It is a principle separate and distinct from the reinstatement principle.

Before we go any further it would be pertinent to note that the principle of reinstatement is only a method of valuation or a basis of assessment. Valuation in the sense of replacement costs is different from valuation for other purposes. Valuation in terms of the reinstatement principle is applicable generally to all things attached to the land and the application to depend firstly on the nature or type of the property and secondly the purpose of the valuation.

The case of *Province of West Bengal* v. *Raja of Jhargram*[9] sets out the tests to be applied for introducing the principle of reinstatement as follows: —

"(34) The tests which should be applied for introducing the principle of reinstatement are that the income derived from the premises acquired would not in the special circumstances of the case constitute a fair basis in assessing the value to the owner. This is because of the special character of the use to which the premises had been put to at the time of the acquisition. It is the nature of the business which is to be displaced that requires the first consideration. Secondly there must be a *bona fide* intention to be reinstated and thirdly the costs of reinstatement are not unreasonably abnormal or have no relation to the market value of the property under acquisition."

Counsel for the applicant finally submitted that if reinstatement principle is not applied in this case the compensation awarded would not be adequate as required by the Constitution. The relevant article in our Constitution, article 13(2), says that no law shall provide for the compulsory acquisition or use of property without adequate compensation. Counsel is relying presumably on the grounds that "adequate compensation" is justiciable.

The learned Legal Adviser, on the other hand, contended that the words "no others" appearing in paragraph 2 of the First Schedule to our Land Acquisition Act, 1960, would preclude the application of the reinstatement principle. It was contended also that section 15 of our Act merely provides for possibility of voluntary arrangement between the Collector and the landowner and that paragraph 2(e) of the Schedule only covers reasonable incidental removal expenditure.

Let us take first the constitutional point. Before the amendment in 1955 article 31(2) of the Indian Constitution, the approximate equivalent of our own article 13, provided that no property shall be taken into possession of or acquired for public purposes

under any law authorising such possession or acquisition unless the law provides for compensation and either fixes the amount of compensation or specifies the principle on which and the manner in which compensation is to be determined. After a serious of cases in the Supreme Court (*West Bengal* v. *Subodh Gopal*,[10] *Dwarkadas Srinivas* v. *Sholapur Spinning Co.*[11] and *State of West Bengal* v. *Mrs. Bela Banerji*[12]) where the Supreme Court held that compensation in that article meant just equivalent, i.e., "full and fair money equivalent" thereby making adequacy of compensation justiciable, an amendment to the Indian Constitution provided that no law on compulsory acquisition or use of property for public purposes shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

In U.S.A., being a common law country, the common law principle of "eminent domain" (power of sovereign to take private property) also applies and there "just compensation" shall be given in the acquisition of private property for public use. This principle is now embedded in the U.S. Constitution in the Fifth Amendment where the proviso says there must be "just compensation." It has been generally held by the various decisions in the U.S.A. that the measure of just compensation in eminent domain is the fair market value of the property acquired as of the date of acquisition.

Our Land Acquisition Act, 1960 makes clear that the basis for determining adequacy of compensation is the market value and other factors set out in paragraph 2 of the First Schedule. All matters of compensation point to the First Schedule (see section 47(2) of the Act). Although the wording in paragraph 2 of our Schedule is quite similar to that of section 23 of the Indian Act and only sub-paragrapn (b) of our paragraph 2 is missing from the Indian section these provisions are not on all fours and the dissimilarity is further signified by the words "no others" appearing in our paragraph 2. All these provisions seem to me to be an express direction of the legislature to exclude all other considerations. Furthermore, my reading of section 15 of our Act does not seem to admit principles of equity to be applied so widely as contended by counsel for the applicant since the operative words in that section would seem to be the words "instead of assessing or awarding monetary compensation enter into any arrangement" and therefore it is only in any such arrangement with the landowner that a sum may be arrived at as may be "equitable having regard to the interests of the parties concerned." Section 15(2) also makes it clear that where the Collector has entered into any arrangement under subsection (1) he shall record the fact that "no monetary compensation has been assessed or awarded." With these provisions and the words "no others" in paragraph 2 of our Schedule the principle of reinstatement is in my view precluded even though the facts of the case might invite the application of that principle in India or in England. What is adequate compensation is a matter for the courts and Article 13(2) of our Constitution enables a law providing for compulsory acquisition or use of property to provide for a method of valuation or a basis of assessment. Our Land Acquisition Act, 1960 has adopted the valuation method prescribed in paragraph 2 of the Schedule with the express direction that *no other considerations* shall be taken into account in arriving at an award. In *Vacher & Sons, Limited* v. *London Society of Compositors*[13] Viscount Haldane L.C. said:

> "For my own part, I do not propose to speculate on what the motive of Parliament was. The topic is one on which judges cannot profitably or properly enter. Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who, in making the laws, have to endeavour to interpret the desire of the country, they are in danger of going astray in a labyrinth to the character of which they have no sufficient guide. . . . I think that the only safe course is to read the language of the statute in what seems to be its natural sense."

In the same case Lord Macnaghten after repeating the observation of Lord Wensleydale in *Grey* v. *Pearson*[14] said:

> "Acts of Parliament are, of course, to be construed 'according to the intent of Parliament' which passes them. That is 'the only rule,' said Tindal C.J., delivering the opinion of the judges who advised this House, in the *Sussex Peerage Case*[15]. But his Lordship was careful to add this note of warning: 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

Nowhere in the Land Acquisition Act, 1960, then can I import the reinstatement principle. In *Magor and St. Mellons Rural District Council* v. *Newport Corporation*[16] Lord Simonds again sets out the duty of the courts where the words of the statute are explicit. He said:

> "The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited."

To do otherwise, according to Lord Simonds referring to Lord Denning's approach would be a "naked usurpation of the legislative function under the thin disguise of interpretation." His Lordship was referring to Lord Denning's dissenting judgment in the Court of Appeal where he canvassed the proposition that to get at the real intention of Parliament the court would do better by filling any gaps in the statute so as to "make sense of the enactment". This proposition of Lord Denning was in fact a re-statement of his own view in a former case of *Seaford Court Estates Ltd.* v. *Asher*.[17]

Material to the construction of paragraph 2 of the First Schedule to our Act but not argued before me are also the provisions of paragraph 3 of the First Schedule to our Act. The contents of paragraph 3 correspond materially to the provisions of section 24 of the Indian Act and they deal with matters which the court shall *not* take into consideration. Comparing paragraph 2 with paragraph 3 of the Schedule it is clearly seen that whereas paragraph 2 deals with principles as basis for determining the amount of compensation paragraph 3 deals with matters which should not be considered in determining the amount of compensation because of their nature being either trivial (damages not otherwise actionable) or sentimental (disinclination on religious or other grounds) or matters not relevant to the value of the land to the owner

(for example, degree of urgency of acquisition and resultant increase in value of the land). Even in India it is admitted that the list in section 24 of the Indian Act (paragraph 3 of our First Schedule) is by no means, and cannot be regarded as, exhaustive.

I am sure that Chang Min Tat J. in 1974 considered whether the reinstatement principle (or the replacement principle) could be applied in *Island Peninsular Development Berhad* v. *The Collector of Land Revenue, Penang,*[18] and although he decided that the principle could not be applied to that case he however came to the conclusion that "since the principles relating to the determination of compensation in our local Act follow closely section 23 of the Indian Act I propose to hold for the purpose of this decision that the principle of reinstatement is applicable in this country."

In my view the legislative scheme of the Land Acquisition Act, 1960 does not admit of the consideration of the reinstatement principle in the assessment of compensation.

Order accordingly.

Solicitors: *Skrine & Co.*

PUBLIC PROSECUTOR v. LEE WYE KHENG

[A.Cr.J. (Syed Agil Barakbah J.) October 19, 1976]
[Alor Star — Kedah Criminal Appeal No. 44 of 1975]

Customs and Excise — Prohibited goods — Possession of foreign gold coins — Mens rea — Burden of proof — Licence — Customs Act, 1967, s. 135.

The accused was charged with knowingly being in possession of prohibited goods, to wit, 95 pieces of foreign gold coins valued at $14,745 such goods being goods the import of which was prohibited except under and by virtue of an import licence issued by the Comptroller General of Customs. At the conclusion of the case for the defence, the learned Senior President, Sessions Court, Alor Star, acquitted and discharged the accused but made an order of forfeiture of the gold coins under section 127 of the Customs Act. On appeal by the Public Prosecutor.

Held, dismissing the appeal: (1) the learned President was justified on the facts in holding on the balance of probability that the accused had no knowledge that the articles were prohibited;

(2) as the exhibits were prohibited goods, the learned President was correct in ordering their forfeiture.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Murad bin Sheikh Ismail (Deputy Public Prosecutor) for the appellant.

Karpal Singh for the respondent.

Syed Agil Barakbah J.: The accused Lee Wye Kheng @ Lee Ah Koo was charged as follows: —

"That you, Lee Wye Kheng @ Lee Ah Koo, at about 9.45 a.m. on November 5, 1973 at Kiet Loong Goldsmith No. 1 Jalan Langgar, Alor Star, in the State of Kedah, were knowingly in possession of prohibited goods, to wit, 95 pieces of foreign gold coins valued at $14,745 such goods being goods the import of which is prohibited except under and by virtue of an import licence issued by the Comptroller General of Customs under the Customs (Prohibition of Imports) Order, 1969, P.U.(A) 426/69 and thereby committing an offence under section 135(1)(d) and punishable under section 135(1)(iii) of the Customs Act, No. 62/67."

At the conclusion of the case for the defence, the learned Senior President, Sessions Court, Alor Star, acquitted and discharged the accused but made an order of forfeiture of the 95 gold coins under section 127 of the Act.

The learned Public Prosecutor has now appealed against the order of acquittal and discharge of the respondent who in turn has appealed against the order of forfeiture. For convenience, the Public Prosecutor is named as the appellant and the accused person as the respondent.

There are seven grounds of appeal of which two grounds (c) and (d) were not proceeded with. The remaining five grounds if taken together narrows down to only one main issue, i.e. whether on the facts and circumstances of the case it was probable that the respondent knew that the gold coins seized in his premises are prohibited goods. It was proven by the prosecution and accepted by the learned President in his grounds of judgment that gold coins are prohibited from importation from all countries, including East Malaysia, by virtue of section 3(a) of the Customs (Prohibition of Imports) Order, 1969, (P.U.(A) 426/69) and item 17 of the Second Schedule referred thereto, except under and by virtue of an import licence granted by and on behalf of the Comptroller-General of Customs and subject to such conditions as may be specified in the licence. The learned President also rightly accepted the prosecution evidence that the respondent was in possession of the articles seized in his premises and that in view of the two ingredients having been proved, the presumptions under sections 119 and 135(2) of the Customs Act arose. The latter sub-section presumes that prohibited goods shall be deemed to be so prohibited to the knowledge of the defendant unless he proves it to the contrary. Under section 119 the burden of proof lies on the defendant that such prohibited goods have been lawfully imported under section 3 of the Order. The onus is on the defendant to show either that he had a licence to import the articles or on the balance of probability that he had no knowledge that the articles were prohibited goods.

In considering the defence, the learned President accepted the respondent's evidence that he had two shops, one a licensed pawnshop at Jitra and the other a goldsmith shop at No. 1, Jalan Langgar, Alor Star, and that the articles (Exhibits P1 and P18) were unredeemed jewellery which were pawned at his Jitra pawnshop and subsequently transferred to his goldsmith shop for sale after having obtained clearance from the O.C.P.D., Jitra, that they were not stolen goods. The latter part of the President's contention was attacked by the first ground of appeal as being a wrong conclusion on the facts and in law. I have had the opportunity to examine some of the exhibits in the course of the appeal and find that they are foreign coins mostly Arabic and some of British and American origin. The ninety-five articles are not "loose" coins but have been converted into articles of jewellery in the form of lockets and pendants. The whole coin piece with the two faces still intact or preserved is mounted around its base with a gold